

STATE OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

In re Petition of Verizon New England Inc. for
Arbitration of an Amendment to
Interconnection Agreements with Competitive
Local Exchange Carriers and Commercial
Mobile Radio Service Providers in
Massachusetts Pursuant to Section 252 of the
Communications Act of 1934, as Amended,
and the *Triennial Review Order*

Docket No. _____

**AT&T OF NEW ENGLAND, INC.'S RESPONSE TO
VERIZON MASSACHUSETTS'S PETITION FOR ARBITRATION**

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Introduction

AT&T Communications of New England, Inc. (“AT&T”)¹ responds to Verizon Massachusetts’s (“Verizon’s”) petition to the Massachusetts Department of Telecommunications and Energy (“Department”) to initiate an arbitration proceeding to amend the interconnection agreement between AT&T and Verizon in light of the Federal Communications Commission’s (“FCC’s”) Triennial Review Order (“TRO”).² Verizon’s proposed amendment is deficient in several respects: It attempts to saddle AT&T with obligations not grounded in the TRO, it ignores obligations placed on Verizon and other ILECs by the TRO, and it fails to grapple with critical issues discussed in the TRO such as batch hot cuts, line splitting and line conditioning. In addition, it seeks to impose rates for conversions and routine network modifications that the TRO indicates must be done at Verizon’s expense. As a result, Verizon’s proposed amendment should be rejected.

To aid the Department in its review, AT&T has organized its response to track the sections of Verizon’s Petition for Amendment. It describes AT&T’s objections to Verizon’s TRO Amendment on a section-by-section basis. Where there is no objection, AT&T so notes. In addition, AT&T includes citations to the applicable sections of the FCC rules and the TRO (to

¹ AT&T’s current affiliates TCG Massachusetts (“TCG”) and ACC Telecom Corp. (“ACC”) have previously negotiated interconnection agreements with Verizon. AT&T, TCG, and ACC have negotiated, and each requests the Department to arbitrate, for each separate entity the issues presented in AT&T’s TRO Amendment. Collectively, AT&T, TCG, and ACC are referred to herein as “AT&T.” As separate entities, AT&T, TCG, and ACC are each entitled to a separate interconnection agreement with Verizon. Moreover, such separate interconnection agreements are operationally important, as AT&T, TCG, and ACC each, to a great degree, operate and manage their own respective networks and require separate rights of interconnection.

² *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, “Report And Order And Order On (continued...) ”

which Verizon has not cited). In order to provide the Department with a line-by-line explanation of AT&T's objections, AT&T has attached a blacklined version of Verizon's Proposed Amendment as Exhibit 1. For the convenience of the Department, AT&T has also prepared an issues matrix which sets out the main areas of dispute between the parties and cross-references the applicable portion of the TRO and the proposed TRO Amendment. That matrix is attached as Exhibit 2. Finally, AT&T provides as Exhibit 3 a clean copy of its proposed TRO Amendment, which it respectfully requests that the Department adopt.

The Recent D.C. Circuit Opinion in *USTA II* Does Not Prevent the Department From Conducting this Arbitration.

At the outset, it is important to note that any argument that an arbitration between AT&T and Verizon should be delayed or stayed in light of the recent *USTA II* decision by the United States Circuit Court of Appeals for the District of Columbia should be ignored.³ The original Verizon petition and this response is unaffected by that decision as that decision has not taken effect, and is quite likely to be stayed for a long period of time. By its terms the decision will not take effect until at least 60 days after issuance, and perhaps for much longer. The Court stayed the effect of its decision until the *later* of: (i) denial of any petition for rehearing or rehearing en banc; or (ii) 60 days from March 2, 2004. Furthermore, there is a strong likelihood that during this period the D.C. Circuit's decision may be stayed pending review by the United States Supreme Court.

The majority of FCC Commissioners who voted in favor of the TRO already have announced their intention to seek both a stay and Supreme Court review of the D.C. Circuit

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Remand And Further Notice Of Proposed Rulemaking," No. FCC 03-36, released August 21, 2003 ("TRO").

decision. AT&T and a number of other parties, including NARUC, wholeheartedly support the FCC majority's actions. AT&T is optimistic that the Supreme Court, which issued a very strong opinion in May 2002 in support of competition,⁴ will accept this case and affirm the FCC's findings and rules as well as the right of the states to implement rules critical to support telecommunications competition, especially (but not exclusively) for mass market consumers. AT&T is equally optimistic that the D.C. Circuit's decision will be stayed, in no small part because of the marketplace confusion and consumer harm that Verizon and other ILECs would likely attempt to create if the decision were allowed to become effective before the Supreme Court has the opportunity to review it.

At this time the FCC's TRO remains in effect and the rules and deadlines imposed by the FCC for completing the Department's nine-month proceeding remain in place. If this arbitration proceeding were stayed for any substantial period of time, the Department could find itself backed into a position where it could no longer comply with its current obligations under the TRO which require resolution of the issues presented in Verizon's petition within 9 months from the issuance of the TRO.

Relevant Procedural Background

On October 2, 2003, Verizon posted a proposed amendment to all of its interconnection agreements on its website (Verizon's "proposed TRO Amendment") and it simultaneously sent a form letter to AT&T (and presumably all other CLECs) seeking negotiation of the proposed TRO Amendment. Verizon omits in its petition to mention that AT&T timely responded to Verizon's proposed changes by letter dated October 14, 2003. That letter detailed AT&T's

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³ *United States Telecom Association v. FCC*, No. 00-1012 (D.C.Cir. March 2, 2004).

significant concerns with Verizon's proposal and suggested negotiation. A month later, on November 7, 2003, Verizon requested that AT&T provide a redline version showing all of its proposed changes to the Verizon proposed TRO Amendment. AT&T agreed to undertake that detailed process and provided Verizon with a redline of Verizon's proposed amendment on February 6, 2004.⁵ AT&T also requested that Verizon agree to meet on February 13, 2004, (or at its earliest convenience) to begin a discussion of the significant areas of dispute. Verizon has not yet committed to any specific dates for negotiation of any of the issues presented by AT&T's TRO Amendment.

Discussion of Proposed Amendments.

As stated above, AT&T has attached a blacklined version of Verizon's Proposed Amendment as Exhibit 1 to this response. AT&T's extensive revision of the Verizon draft was necessary because Verizon did not faithfully craft the amendment to reflect the new mandates of the TRO.

In proposing its Amendment, AT&T expressly reserves the right to ask the Department to impose upon Verizon under Massachusetts law additional unbundling or other requirements not inconsistent with Verizon's obligations under federal law. As is true with any relevant change in law, the interconnection agreement between AT&T and Verizon would have to be further amended if any such additional requirements are imposed.

Finally, in some cases the TRO simply clarified or modified existing Verizon requirements rather than making wholesale changes in law. In those cases, for example with

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⁴ *Verizon Communications, Inc. v. FCC*, 535 U.S. 467 (2002).

respect to hybrid loops, AT&T's proposed TRO Amendment reflects these modifications but AT&T does not mean to suggest by its response that there has been a change in law.

I. POTENTIAL FUTURE CHANGES IN IMPAIRMENT FINDINGS

There is one overriding dispute between the parties that arises in several different sections of the TRO Amendment – namely, how to handle any further findings with respect to impairment that may arise in the ongoing TRO impairment docket. Rather than repeat the debate in each section below, AT&T addresses it as a threshold issue. It is AT&T's position that the interconnection agreement simply cannot and should not address the potential outcomes of the impairment proceedings. No party has a crystal ball and any attempt to anticipate decisions or findings is unlikely to be fruitful. Rather, it creates messy and ambiguous contract language, as evidenced by Verizon's proposed Amendment, which will inevitably result in more disputes between the parties. Thus, AT&T's proposed TRO Amendment simply states that in the event there are further findings of impairment or non-impairment⁶ by the FCC or the Massachusetts Department within the ongoing TRO impairment proceedings, parties to the interconnection agreement should rely on the change of law provisions of that agreement, in accordance with direction from the FCC or the Department, to make any subsequent TRO-based amendments.

This language is consistent with the TRO's transition provisions, which require the parties to follow the Section 252 process to implement the TRO's changes.⁷ The FCC insisted upon the Section 252 process even in the face of several RBOCs' requests that that process be

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⁵ The redline provided to Verizon on February 6, 2004, is largely the same as the blackline attached as Exhibit 3 to this petition. Since early February AT&T has made a few additional modifications to the Verizon proposed amendment, most notably including a section on batch hot cuts metrics and performance standards.

⁶ Contrary to Verizon's proposal, which discussed only future findings of non-impairment, the AT&T language is outcome neutral, discussing future findings of impairment and non-impairment.

overridden “to permit unilateral change to all interconnection agreements to avoid any delay associated with negotiation of contract provisions.”⁸ Verizon proposes in its draft amendment that any further non-impairment findings be *automatically* incorporated into the interconnection agreement without negotiation or discussion as to the implementation of any such findings.⁹ Not only is that position contrary to the TRO’s transition provisions, it is unworkable. To the extent that there are further non-impairment findings, it is inevitable that the parties will need to negotiate (and potentially arbitrate) the meaning of those findings and how they can be implemented through the interconnection agreement. Verizon’s petition seeks arbitration to implement the TRO at this time because, as Verizon acknowledges, the parties have vastly different views on the plain meaning of those provisions in the order that do not require further Department, FCC or judicial action.

Set forth below is AT&T’s analysis of each section of Verizon’s proposed amendment with explanations of AT&T’s objections to those sections. Again, the language to which AT&T specifically objects is set out in Exhibit 1, a blacklined version of Verizon’s proposed TRO Amendment. In addition, the issues in dispute are identified and detailed in AT&T’s issues matrix attached as Exhibit 2.

II. GENERAL CONDITIONS (TRO AMENDMENT SECTION 1)

The parties have only minor differences with respect to the general conditions section. AT&T does not object to any language contained in sections 1.1, 1.2, or 1.4 but instead adds language to those sections. AT&T objects to certain language in section 1.3, as noted in Exhibit

(continued...)

⁷ TRO, ¶ 701.

⁸ *Id.*

⁹ *See e.g.*, Verizon’s Proposed TRO Amendment, § 3.4.2.

1. In its first section, AT&T's proposed amendment sets out the conditions under which CLECs have a right to obtain access to UNEs and provides definitions of key terms.

III. DEFINITIONS (TRO AMENDMENT SECTION 2)

In the "glossary" section which AT&T has renamed "Definitions" to be consistent with the TRO, Verizon's proposed amendment strayed quite far from the definitions set forth in the TRO. For example, in its original definition of a "FTTH loop" Verizon fails to clarify that FTTH loops do not include intermediate fiber in the loop architectures such as fiber-to-the-curb, fiber-to-the building or fiber-to-the node. AT&T's amendment makes clear that those types of loop architectures are properly defined as "hybrid loops."¹⁰ Similarly, as explained in more detail in Section VIII below, AT&T has crafted its definitions of dedicated transport and dark fiber transport based on the plain language of the TRO whereas Verizon ignores the full definition.¹¹ In one instance, Verizon's original glossary included a term not found in the TRO, "House and Riser Cable," that appears to be used in place of the TRO's definition of "Inside Wire Subloop" in 47 C.F.R. 51.319(b)(2). AT&T's amendment in Section 2.11 includes the proper definition for Inside Wire Subloop.

AT&T's amendment also sets out a list of facilities or classes of facilities for which the TRO has made a general finding of non-impairment. This list is set forth in the amendment's definition of "Declassified Network Elements" at Section 2.18. As noted above, the change in law provisions or any further direction from the Department or the FCC will govern to the extent the ongoing impairment proceedings require additions or subtractions from this list.

AT&T proposes definitions for "Line Conditioning" (Section 2.13) and "Line Splitting" (Section 2.15) two topics ignored by Verizon. Finally, AT&T proposes additional language to

¹⁰ Exhibit 1, AT&T Proposed TRO Amendment (blackline), § 2.10 (FTTH loop) and § 2.12 (Hybrid loop).

sharpen the definitions of “Subloop for Multiunit Premises Access” and “Loop Distribution.”

AT&T does not object to the definitions proposed by Verizon in Sections 2.1, 2.4, 2.5, 2.8, 2.19, 2.20, 2.22 and 2.25. All other sections include language deleted or added by AT&T, as set forth in Exhibit 1. AT&T’s TRO Amendment at Section 2 sets forth the definitions established in the TRO and should be adopted.

IV. LOOPS (TRO AMENDMENT SECTION 3.1)

Consistent with the FCC’s prior opinions, the TRO requires Verizon to unbundle all local (voice-grade) loops comprised of copper wire or cable, including existing copper loops, newly deployed copper loops and spare copper.¹² The TRO does eliminate unbundling for the highest capacity “OCn” loops.¹³ It also permits, under certain circumstances, the retirement of copper loops or subloops that have been replaced with fiber, except with respect to FTTH loops, but requires Verizon to follow certain network modification and disclosure requirements when retiring copper loops and subloops.¹⁴ Verizon’s proposed amendment inadequately addresses issues around retirement of copper loop. As discussed below, AT&T’s proposed language ensures that all of the terms and conditions related to the retirement of copper loops are included in the agreement.¹⁵

Under the TRO, Verizon may challenge the national findings of impairment with respect to DS1 and dark fiber loops.¹⁶ To the extent that there are any non-impairment findings made with respect to high-capacity loops during the TRO impairment proceedings, the parties will be

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¹¹ *Id.* at §§ 2.2,2.3.

¹² TRO, ¶¶ 201-202.

¹³ *Id.*

¹⁴ *Id.* at ¶¶ 273-284.

¹⁵ Exhibit 1, AT&T Proposed TRO Amendment (blackline) §§ 3.1.2, 3.1.2.7, 3.1.2.9.

required to follow any direction provided by the Department or the FCC and implement those directives in accordance with the change in law procedures in the interconnection agreement. Thus, with respect to loops, AT&T's TRO Amendment simply sets out those requirements already established by the TRO. For the reasons discussed in more detail below, it should be adopted.

A. High Capacity and Dark Fiber Loops (TRO Amendment Sections 3.1.1 and Section 3.1.5)

The TRO requires Verizon to provide unbundled access to high capacity and dark fiber loops and AT&T's TRO Amendment codifies that obligation. In its proposal, Verizon continues to insist on language that would automatically amend the interconnection agreement if there are any further non-impairment findings with respect to such loops by the Department or the FCC. AT&T's TRO Amendment, consistent with the TRO, requires Verizon to provide AT&T non-discriminatory access to DS1 loops, a maximum of 2 DS-3 loops (at any single customer location), and Dark Fiber loops on an unbundled basis.¹⁷

B. Fiber-to-the-home ("FTTH") Loops (TRO Amendment Section 3.1.2)

With respect to FTTH loops, Verizon is not currently required to provide AT&T unbundled access where Verizon has deployed such a loop to an end user's customer premises that previously has not been served by any Verizon loop.¹⁸ However, where Verizon replaces an existing copper loop with FTTH, it must (1) continue to maintain the copper loop and make it available as a unbundled element, or (2) retire the copper loop in accordance with the TRO's

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¹⁶ TRO, ¶¶ 324-325.

¹⁷ Exhibit 1, AT&T Proposed TRO Amendment (blackline), §§ 3.1.1.1 - 3.1.1.2.

¹⁸ *Id.* at § 3.1.2.1.

express copper loop retirement procedure.¹⁹ Where it has followed the required procedure, Verizon must provide AT&T with nondiscriminatory unbundled access to a 64 kilobits per second transmission path capable of voice grade service over the FTTH loop. Verizon's proposed TRO Amendment failed to address the TRO's provisions on maintaining copper loops and retirement of copper loops, such as notice of proposed retirement, compliance with Department guidelines regarding retirement, and implementation of copper loop retirement in accord with agreed upon procedures.

AT&T's TRO Amendment includes maintenance and retirement procedures.²⁰ The procedures, including but not limited to any procedures that have or may be established by the Department for such retirement, are necessary to ensure that Verizon's retirement of copper loops and subloops does not result in any interruption of service to AT&T customers. The procedures are also consistent with, and mandated by, the TRO and therefore should be adopted.

C. Hybrid Loops (TRO Amendment Section 3.1.3)

A hybrid loop, as defined in the TRO, "consists of both copper and fiber optic cable (and associated electronics, such as DLC systems)."²¹ The fiber piece of the loop typically carries traffic from the central office to a centralized location such as a remote terminal where copper wire then carries the traffic to and from the end user. The TRO requires Verizon to provide AT&T access to unbundled hybrid loops except for the provision of packet switching and certain broadband services. AT&T's TRO Amendment sets out these TRO requirements and therefore should be adopted.

¹⁹ TRO, ¶ 281-284.

²⁰ *Id.* at § 3.1.2.3-3.1.2.9.

²¹ TRO, ¶ 288, fn 832.

D. IDLC Hybrid Loops (TRO Amendment Section 3.1.4)

Carriers use digital loop carrier (“DLC”) systems to aggregate the many copper subloops that are connected to remote terminal locations. At a remote terminal, a carrier multiplexes signals onto a fiber feeder loop facility and transports the multiplexed signal to its central office. These DLC systems may be integrated directly into the carrier’s switch, otherwise known as Integrated DLC systems or “IDLC.” Verizon’s proposed TRO Amendment takes the position that providing AT&T with a “technically feasible method of unbundled access” means that Verizon should undertake construction of new facilities at AT&T’s expense. Verizon also seeks to exempt its provisioning of loops from standard provisioning intervals and performance measures and remedies. These positions of Verizon are self-serving and without any support in the TRO.

When AT&T seeks to order an unbundled loop to serve a retail customer currently being served by Verizon over IDLC, the TRO requires that Verizon provide this service “either through a spare copper facility or through the availability of Universal DLC systems” or, if neither is available, Verizon must provide AT&T with a “technically feasible method of unbundled access.”²² AT&T’s TRO Amendment sets forth the plain and unambiguous language of the TRO and should be adopted.²³

E. Line Sharing (TRO Amendment Section 3.2.1)

While the TRO eliminates over time Verizon’s obligation to provide line-sharing as a UNE under federal law, it requires Verizon to continue existing line-sharing arrangements for customer locations where AT&T began providing xDSL service using line sharing prior to

²² *Id.* ¶ 297.

²³ Exhibit 1, AT&T Proposed TRO Amendment (blackline), § 3.1.4.

October 2, 2003.²⁴ It also requires Verizon to provide new line sharing arrangements on a transitional basis pursuant to the rates, terms and conditions set out in 47 C.F.R. 51.319(a)(1)(i). Although Verizon's original proposal addressed to some extent line sharing, it was silent on the line splitting and line conditioning requirements of 47 C.F.R. 51.319(a)(1)(ii). AT&T's TRO Amendment adds sections to address these new TRO requirements.²⁵

In addition, Verizon seeks to enter into a separate agreement with AT&T that would govern the new line-sharing arrangements. AT&T, consistent with the TRO, believes these requirements should be a part of the interconnection agreement. There is simply no reason to have two agreements where one will suffice.

AT&T's TRO Amendment includes procedures consistent with the Rule governing line splitting and line conditioning arrangements. Those procedures require Verizon to use a splitter collocated at the central office to enable AT&T to engage in line splitting and to condition a copper loop at no cost to AT&T where AT&T seeks access in order to ensure that the copper loop is suitable for providing digital subscriber line services.²⁶ In addition, AT&T's TRO Amendment sets out a procedure for Verizon's maintenance, repair and testing in connection with line splitting.²⁷

Each of the sections of the TRO Amendment proposed by AT&T is consistent with the TRO and Rules and should be adopted.

V. SUBLOOPS (TRO AMENDMENT SECTION 3.3)

The TRO requires Verizon to provide AT&T with unbundled access to Verizon's copper subloops and Verizon's network interface devices ("NIDs"). These requirements encompass any

²⁴ TRO, ¶¶ 255-270.

²⁵ Exhibit 1, AT&T Proposed TRO Amendment (blackline), § 3.2(A) and (B).

²⁶ *Id.*

²⁷ *Id.* § 3.2(C).

means of interconnection of the Verizon distribution plant to customer premises wiring.²⁸ In addition, the FCC found that AT&T and other CLECs are impaired on a nationwide basis “without access to unbundled subloops used to access customers in multiunit premises.”²⁹ As a result, the TRO requires Verizon to provide AT&T with access to any technically feasible access point located near a Verizon remote terminal for these subloop facilities.³⁰

Verizon’s proposal with respect to subloops fails to use definitions and terms consistent with those used in the TRO. It fails to fully address requirements concerning connecting of subloops and provisioning of subloops. It omits any mention of the demarcation point discussed in the TRO. Further Verizon’s proposal saddles AT&T with myriad obligations that are not supported by the TRO. For example, Verizon seeks to require AT&T to collocate in order to access inside wire subloops. Verizon also seeks to block AT&T from connecting to inside wire subloops except by way of an established SPOI.

AT&T’s TRO Amendment, on the other hand, sets out in detail the definitions of subloops and accessible terminals contained in the TRO.³¹ AT&T then provides detailed procedures for the connection of subloop elements to any technically feasible point both with respect to distribution subloop facilities and subloops in multi-tenant environments.³² AT&T sets forth the TRO’s requirements with respect to Inside Wire Subloops.³³ In addition, AT&T provides detailed requirements covering Verizon’s provision of a single point of interconnection

²⁸ TRO, ¶ 205.

²⁹ *Id.*, ¶ 348.

³⁰ *Id.*, ¶ 343.

³¹ Exhibit 1, AT&T Proposed TRO Amendment (blackline), §§ 3.3.1-3.3.4.

³² *Id.* at §§ 3.3.7-3.3.9.

³³ *Id.* at § 3.3.10.

(“SPOI”) suitable for use by multiple carriers.³⁴ AT&T’s TRO Amendment is consistent with and faithful to the TRO’s requirements on subloops and should therefore be adopted.

VI. UNBUNDLED LOCAL SWITCHING (TRO AMENDMENT SECTION 3.4)

Verizon’s proposed amendment absolves it of responsibility to provide any form of switching other than mass market switching and attempts to predict the outcome of the impairment proceedings with regard to mass market switching obligations.³⁵ The TRO requires Verizon to provide AT&T with unbundled access to mass market switching but relieves Verizon of its obligation to provide enterprise switching.³⁶ As to the latter, the TRO requires Verizon to provide a transition period to AT&T to move its enterprise customers to alternative service arrangements absent a Department petition to the FCC seeking to rebut the FCC’s national finding of non-impairment.³⁷ AT&T objects, then, to language in each subsection of section 3.4 as demonstrated in Exhibit 1. AT&T has incorporated the requirements of the TRO discussed above into its Amendment and these changes should be adopted.

VII. SIGNALING/DATABASES (TRO AMENDMENT SECTION 3.4.3)

The TRO requires Verizon to provide AT&T with unbundled access to its signaling networks, which directs calls between switches or between switches and call-related databases, wherever AT&T has obtained unbundled circuit switching.³⁸ In addition, Verizon must provide AT&T continued access to the 911 and E911 call-related databases.³⁹ Verizon’s petition recognizes these requirements and much of its language, as indicated in AT&T’s blackline, is acceptable to AT&T. However, AT&T’s proposal makes the terms used in this section more

³⁴ *Id.* at § 3.3.11.

³⁵ Verizon TRO Amendment §§ 3.4.1 and 3.4.2.

³⁶ TRO, ¶ 419.

³⁷ *Id.*, ¶ 525.

³⁸ TRO, ¶ 551.

³⁹ *Id.*

consistent with the language of the TRO. AT&T's TRO Amendment sets forth these requirements of the TRO and should be adopted.

VIII. UNBUNDLED INTEROFFICE FACILITIES (TRO AMENDMENT SECTION 3.5)

The TRO requires Verizon to provide AT&T with unbundled access to dark fiber, DS3 and DS1 transport facilities.⁴⁰ Dedicated transport and dark fiber transport are defined as transmission facilities between Verizon switches or wire centers including also locations where Verizon has its own facilities at a CLEC's premises.⁴¹ Verizon's proposed definition of dedicated transport and dark fiber transport ignores footnote 1126 of the TRO and excludes these arrangements where Verizon has facilities on a CLEC's premises. AT&T's TRO Amendment in both the definition and Section 3.5 supplies the TRO's definition of dedicated transport and dark fiber transport.

As to DS3 transport facilities, the TRO establishes a "maximum number of twelve unbundled DS3 transport circuits that a competing carrier or its affiliates may obtain along a single route."⁴² AT&T's TRO Amendment adds language to Section 3.5.2.2 to clarify that transmission paths between identical end points are considered on a single route regardless of whether any intermediate points are included.⁴³

AT&T objects to language in all subsections of Section 3.5 and proposes new language, as shown in Exhibit 1. AT&T's TRO Amendment incorporates these requirements and should be adopted.

⁴⁰ *Id.*, ¶¶ 381-384 (dark fiber); 386-387 (DS3); 390-393 (DS1).

⁴¹ *Id.*, ¶ 365 and fn 1126.

⁴² *Id.*, ¶ 388.

⁴³ *Id.*

**IX. COMMINGLING, CONVERSIONS AND COMBINATIONS (TRO
AMENDMENT SECTION 3.6)**

Prior to the issuance of the TRO, the FCC placed certain restrictions on when competitive carriers could “commingle” or combine “loops or loop-transport combinations with tariffed special access services.”⁴⁴ These combinations of loop-transport are also referred to as Enhanced Extended Links or “EELs.” The TRO eliminated the restrictions on EELs and instead the FCC modified the rules to “affirmatively permit requesting carriers to commingle UNEs and combinations of UNEs with services (e.g. switched and special access services offered pursuant to tariff), and to require incumbent LECs to perform the necessary functions to effectuate such commingling upon request.”⁴⁵

Verizon has taken the position that commingling and conversion need not be permitted until there is an amendment to the interconnection agreement. This reading is inconsistent with the TRO and entirely self-serving as it permits Verizon, while it drags its feet in negotiations, to overcharge AT&T for special access rather than providing EEL conversion. Verizon has also taken the following positions which contradict the TRO: (1) AT&T should be required to re-certify that it meets the TRO’s eligibility requirements for DS1 and DS1 equivalent circuits on a circuit-by-circuit basis rather than through the use of a single written or electronic request; (2) AT&T must provide in an EEL order or conversion request information on a circuit-by-circuit basis that is not essential to the provisioning or conversion process; (3) Verizon’s performance in connection with commingled facilities is not subject to the interconnection agreement’s standard provisioning intervals and performance measures; and (4) Verizon is entitled to apply a non-recurring charge for each circuit that AT&T requests to convert from a wholesale service to UNE

⁴⁴ *Supplemental Order Clarification, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, ¶ 22 (2000).

or UNE combination, as well as other fees not contemplated by the TRO (e.g. “retag fees”). For example, Verizon’s amendment would require AT&T to reimburse Verizon for the entire cost of an audit where an auditor finds that AT&T failed to comply with the service eligibility criteria for any DS1 circuit. In addition, Verizon argues that each of the specific types of commingling arrangements set out in the TRO need to be repeated in the interconnection agreement. AT&T submits that a reference to the FCC’s Rule 51.318 is sufficient.

According to the TRO, commingling and conversion must be permitted by Verizon upon the TRO’s effective date so long as the requesting carrier certifies that it has met certain eligibility criteria.⁴⁶ In light of this new rule, AT&T has proposed amendment to the ICA to make clear that (1) as of October 2, 2003, Verizon is required to provide commingling and conversions unencumbered by additional processes or requirements (e.g., requests for unessential information) not specified in TRO;⁴⁷ (2) AT&T is required to self-certify its compliance with any applicable eligibility criteria for high capacity EELs (and may do so by written or electronic request) and to permit an annual audit by Verizon to confirm its compliance;⁴⁸ (3) Verizon’s performance in connection with commingled facilities must be subject to the interconnection agreement’s standard provisioning intervals and performance measures;⁴⁹ and (4) there will be no charges for conversion from wholesale to UNEs or UNE combinations.⁵⁰

(continued...)

⁴⁵ TRO, ¶ 579.

⁴⁶ *Id.*, ¶ 589; Rule 51.318.

⁴⁷ *Id.*, ¶ 586, 588, 623-624.

⁴⁸ *Id.*, ¶¶ 623-624.

⁴⁹ *Id.*, ¶ 586; Rule 51.316(b).

⁵⁰ *Id.*, ¶ 587; Rule 51.316 (c) (“Except as agreed to by the parties, an incumbent LEC shall not impose any untariffed termination charges or any disconnect, re-connect fees, or charges associated with establishing a service for the first time, in connection with any conversion between a wholesale service or group of wholesale services and an unbundled network element or combination of unbundled elements”).

As Exhibit 1 shows, AT&T asserts objections to much of the language in Section 3.6 and proposes language that is consistent with and faithful to the terms of the TRO. As such, AT&T's proposals regarding section 3.6 and its subsections should be adopted.

X. ROUTINE NETWORK MODIFICATIONS (TRO AMENDMENT SECTION 3.7)

The TRO requires ILECs to make routine network modifications to unbundled transmission facilities used by requesting carriers where the requested transmission facility has already been constructed.⁵¹ "Routine network modifications" include "those activities that incumbent LECs regularly undertake for their own customers."⁵² Examples of such necessary loop modifications include "rearrangement or splicing of cable; adding a doubler or repeater; adding an equipment case; adding a smart jack; installing a repeater shelf; adding a line card; and deploying a new multiplexer or reconfiguring an existing multiplexer."⁵³

Verizon seeks to amend the pricing schedule to add more than a dozen rate elements for alleged non-recurring costs associated with routine network modifications. The TRO is quite clear that AT&T shall not be obligated to pay separate fees for routine network modifications to any UNE or UNE combination unless Verizon demonstrates that such costs are not already recovered from monthly recurring rates for the applicable UNE(s) or from another cost recovery mechanism.⁵⁴ Verizon cannot make such a showing but instead seeks double recovery of costs. In section 3.7.2, Verizon attempts to exempt the facilities that require routine network modifications from the standard provisioning intervals and the performance measures and

⁵¹ TRO, ¶ 632.

⁵² *Id.*

⁵³ *Id.*, ¶ 634.

⁵⁴ *Id.*, ¶ 640.

remedies contained in the interconnection agreement or as otherwise determined by applicable law.⁵⁵ The TRO does not support such an exemption.

Given the clarification of “routine network modifications” in the TRO, AT&T seeks amendment of the interconnection agreement to reflect the requirement that Verizon make such routine network modifications. Verizon agrees that it must make routine network modifications but asserts that AT&T must pay separately for these modifications. Verizon has failed to show any basis for billing the nonrecurring charges that it lists in its pricing schedule and AT&T rejects any such charges.

As such, Exhibit 1 reflects AT&T’s objections to language in both sections 3.7.1. and 3.7.2 of Verizon’s proposed amendment. AT&T’s TRO Amendment, which reflects Verizon’s requirement to provide routine network modifications without any supplemental or double-charge by Verizon, should be adopted.

XI. TRANSITIONAL PROVISIONS FOR DECLASSIFIED NETWORK ELEMENTS (TRO AMENDMENT SECTIONS 3.8 AND 3.9 AND EXHIBIT A)

As described above, the TRO removed Verizon’s obligation to provide AT&T with unbundled access to a limited set of UNEs. In those circumstances, the TRO sets out a transition period and process that Verizon must follow as to certain declassified network elements and permits the parties to agree contractually to an acceptable process as to other declassified network elements.⁵⁶ AT&T has set forth in its TRO Amendment a proposed process for the parties to follow should Verizon seek to discontinue its provision of identified network elements as unbundled network elements.⁵⁷ The procedure requires Verizon to provide written notice to AT&T and to provide AT&T with sufficient time to request disconnection, submit a request for

⁵⁵ *Id.*, ¶ 639.

an analogous access service arrangement, submit a request for an analogous Declassified Network Element pursuant to the terms of AT&T's Exhibit A (as applicable) or object that the declassification of the network element in question is not proper under the TRO or other applicable law.⁵⁸ If a dispute arises, the parties will be entitled to seek resolution by the Department. This reasonable process will permit the TRO's required "seamless" customer transitions, where necessary, and avoid unnecessary or improper disruptions of service.

Verizon prematurely proposes a transition period and a migration process for both mass market and enterprise switching. Given that there is currently a finding of *impairment* for mass market switching and that the Department is presented with issues of migration and transition in its impairment and hot cut proceedings, such an amendment, if any, to the interconnection agreement should be considered only after those proceedings are concluded and subject to the Department's rulings. Until that time, there has been no change in law that would warrant an amendment under the change in law provisions of the ICA. AT&T objects to all subsections of section 3.8 as set out in Exhibit 1. In addition, AT&T proposes a new section 3.9 to further address these issues.

XII. PRICING (PRICING ATTACHMENT)

Verizon attempts to introduce new prices into the interconnection agreement as part of its proposed TRO amendment. AT&T objects to section 1.2 of Verizon's proposed amendment in that the pricing should be set based on mutually agreed upon rates or Department approved rates. AT&T urges the Department to reject Verizon's pricing Exhibit A altogether.

(continued...)

⁵⁶ *Id.*, ¶ 532, 701.

⁵⁷ AT&T TRO Amendment Section 3.8.

⁵⁸ *Id.*

Additional Area Where Amendment to the ICA is Warranted

I. HOT CUT PERFORMANCE METRICS AND REMEDIES (TRO AMENDMENT SECTION 3.10 AND EXHIBIT B)

A critical basis of the FCC's national finding of impairment with respect to mass market switching is the poor performance and high cost of "hot cuts" – the process required to migrate customers from Verizon's switch to a CLEC's switch when the CLEC uses UNE-L (rather than UNE-P) to provide service.⁵⁹ The FCC found the existing hot cut process to be so deficient (across all ILECs, including Verizon), that it delegated to states the task of adopting within nine months a "seamless" and "low-cost" batch hot cut process that would allow the migration of large numbers of customers to UNE-L service.⁶⁰

The need for a seamless batch hot cut process cannot be overstated. If this Department were to find that CLECs were unimpaired in any market without unbundled mass market switching, then the industry would likely be faced with having to transition millions of customers to UNE-L (assuming existing CLECs decided to continue offering service in the absence of UNE-P).

In the absence of a tested and proven batch hot cut process, the potential for significant customer disruption is tremendous. The hot cut process (batch or otherwise) is labor intensive and prone to customer outages and delays.⁶¹ If the process is not seamless, customers will be frustrated, CLEC reputations will be harmed, consumers will not view competitive carriers as viable alternatives to Verizon and, most problematic, hundreds of thousands of customers would

⁵⁹ TRO ¶ 473.

⁶⁰ TRO ¶¶ 468-69; 487-88.

⁶¹ It is for this very reason that AT&T does not believe any manual batch hot cut process can satisfy the requirements set forth in the TRO. Nevertheless, AT&T has proposed the metrics and associated remedies because a batch hot cut process is an important element of any competitive local telecommunications environment and may be the primary tool available to migrate customers to UNE-L depending on this Department's future rulings.

experience outages or other problems with their telephone service such as misrouting of calls and an inability to receive or make calls.

Absent performance metrics and remedies, Verizon has no incentive to make sure that its batch hot cut process operates smoothly and every incentive *not to* perform batch hot cuts properly. Although consumers are harmed by poor ILEC batch hot cut performance, the ILEC benefits. First, Verizon would benefit because poor batch hot cut performance would harm the reputation of its competitors because end users would attribute problems to their service provider, not to Verizon. Second, every end user that Verizon migrates to UNE-L results in a direct loss of revenue for Verizon. Thus, without performance measurements and remedies focused on the batch hot cut process, Verizon would have no reason to develop, implement and execute batch hot cuts in a manner that would allow CLECs to compete using UNE-L. Moreover, the potential remedies must be strong enough to provide a *meaningful* incentive for Verizon to act in a nondiscriminatory manner.

Not surprisingly, Verizon's proposed language does not even mention amending Schedule 26.2 of the Agreement (the Schedule addressing performance metrics and remedies) to account for the TRO's emphasis on the batch hot cut process and the now increased importance of hot cuts generally. In contrast, AT&T's TRO Amendment Section 3.10 identifies key areas that metrics must address, an annually-capped dollar amount for remedies that should motivate Verizon to meet the standards in the metrics and a process and timeline for developing the details of the changes to the metrics and remedies plan. Most importantly, AT&T's proposed language guarantees continued availability of unbundled mass market switching under the terms of the Agreement until such time as performance metrics and remedies are adopted and implemented with stable performance. This is the only way to be sure that Verizon does not delay metrics and remedies implementation and is the only way to protect the millions of consumers that might

have to be migrated to UNE-L. Therefore, Section 3.10 of AT&T's TRO amendment should be adopted.

Conclusion

AT&T respectfully requests the Department to reject Verizon's proposed TRO amendment and to adopt AT&T's proposed amendment of its interconnection agreement with Verizon.

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